UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
Case 01-4319-CIV-KING

SYLVIA ALLEN
Plaintiff,
vs.
R.J REYNOLDS TOBACCO COMPANY,
and PHILIP MORRIS INCORPORATED
Defendants.

MIAMI, FLORIDA
FEBRUARY 14, 2003
FRIDAY - 1:30 P.M.
AFTERNOON SESSION

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE JAMES LAWRENCE KING,
UNITED STATES DISTRICT JUDGE
VOLUME 1B

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AFTERNOON SESSION

THE COURT: Thank you. Be seated, please. Sorry about the delay. Judge Marcus and I were trying to work on a draft, some administrative things that we had to send out in a draft. We had to send it e-mail. Got held up. I'm sorry.

[The jury returns to the courtroom.]

THE COURT: Thank you. Be seated, please. Next witness.

MR. GROSSMAN: Mrs. Safra.

COURTROOM DEPUTY: Please state your full name spelling your last name for the record.

THE WITNESS: Verna Safra, S-a-f-r-a.

VERNA SAFRA, PLAINTIFF'S WITNESS, SWORN.

DIRECT EXAMINATION

BY MR. GROSSMAN:

Q. Good afternoon, Mrs. Safra.

A. Good afternoon.

Q. We met today for the first time?

A. Correct.

Q. You know I am Stuart Grossman. I represent the Allens.

A. Yes, I do.

Q. Have you ever testified in this courtroom before?

A. No, I have not.

Q. Whoever is at this podium is going to ask you questions. But if you can address your remarks to the jury. Just relax.

If you can lean into the microphone and try to speak loudly if you can.

A. Okay.

Q. Tell the folks your full name.

A. My name is Verna Safra. [DELETED].

Q. Do you know Sylvia Allen?

A. Yes, I have known Sylvia Allen for 42 years.

Q. How about her husband, Bob?

A. And Bob also.

Q. How was it that you came to meet Mr. and Mrs. Allen?

A. We were looking for a photographer for our wedding. We were in our early twenties. I met them through my father. I think we might have been their first or second wedding that they photographed, 42 years ago.

Q. You and your husband, his name is?

A. Lenny Safra.

Q. You are still married for about --

A. 42 years.

Q. You were the first wedding that they did?

A. Correct.

Q. Prior to that time did you know the Allens?

A. No, I had not met them. When we met them for our wedding photographs we became very friendly immediately and through the years.

Q. As the years went by did you and your husband have

children?

A. Yes, two.

Q. Did your family have very special occasions that required the use of professional photographers?

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A. Absolutely. They were there to do it all. Both of them.
Q. Both of them doing photography work?
A. Correct.
Q. As you know, this case is about Bob and his life and Sylvia's life together. Could you describe them in a professional way. When they worked professionally, how did they appear to you?
A. Extremely professional, having a lot of fun with being together and what they did. Just being there and supporting each other.
Q. Was there ever a time that Bob was unable to do the work that he was asked to do?
A. Yes, when he got sick.
Q. I mean before he got sick, was there ever a time that Bob was unable to do photography?
A. No.
Q. Were these events important to your family?
A. Yes, we did a Bas Mitzvah, a Bar Mitzvah, two weddings, my son and daughter.
Q. Were albums made?
A. Absolutely. Absolutely. To this day, they are still a

part of our life. They are still a part of our family. I don't think it would have been a wedding, or a special occasion, without them.
Q. Would you describe Bob for the jury?
A. He was fun-loving. Very sweet, very kind. Never even swatted a fly. I mean, just always joking, having fun.
I remember when we first met we were all pretty poor. Bob would make his famous fried chicken. Bob and LuAnne, Bob and Sylvia's oldest child. We would all hang out and laugh a lot. He was just so sweet and so kind. I am sorry.
Q. How would you describe their marriage for the jury, please?
A. They had a very symbiotic relationship because of the business. Being in that atmosphere with your spouse for all of those years and being able to maintain a relationship, I thought, was pretty remarkable. I don't know if I could do that with my husband. Taking care of the children, taking care of her mother. They were just always there for each other.
Q. Did Bob Allen smoke?
A. Yes, he did. I never saw him without a cigarette.
Q. You have been an observer of theirs for nearly 40 years?
A. Over.
Q. Has Sylvia's life changed since Bob's death?
A. Yes, she is like a totally different person. It's almost like she lost herself since Bob was gone.
Q. Are these your observations? Tell us about them.

A. These are observations. She is very melancholy. She is still having a hard time getting past the mornings. Doesn't seem to be able to get past that point. Sylvia is a very strong woman. I don't see that right now. I haven't seen that since Bob's death.
Q. Do you still care for her as a friend?
A. Yes, absolutely.
Q. You are still in touch?
A. Absolutely.
Q. So the process has gone on since the 40th-plus year?
A. Absolutely.
Q. Is Sylvia still working?
A. She is trying to, yes. She is trying to carry on. I can see how difficult this is.
Q. Did Bob have a sense of humor?

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A. Tremendous, tremendous.
Q. Fun fellow?
A. Absolutely, absolutely. Kind, kind, kind. Generous.
MR. GROSSMAN: Thank you, Ms. Safra.
MR. CESARANO: No questions, Your Honor.
THE COURT: Thank you. You may step down. Thank you.
[Witness is excused.]
MR. GROSSMAN: We are calling our next witness, now.
Susan Smith.
THE COURT: Okay.

THE WITNESS: My name is Susan Smith.
SUSAN SMITH, PLAINTIFF'S WITNESS, SWORN.
DIRECT EXAMINATION
BY MR. GROSSMAN:
Q. Tell the jury your name, please.
A. My name is Susan Smith.
Q. Where do you live, please?
A. [DELETED]. Did you need my address?
Q. No.
You have come on your own volition to testify?
A. Yes, indeed.
Q. We met today for the first time during the lunch hour?
A. That is correct.
Q. Have you ever testified in a court of law before?
A. Not actually testified. I advocated for one of my patients. That's it. I didn't sit for something like this.
Q. This is our jury. If you would, please, direct your responses to them. We won't be long with you, Mrs. Smith.
A. Okay.
Q. Please tell the jury something about yourself.
A. I am a licensed clinical social worker. I am a psychotherapist. I work with people who struggle with pretty serious drug addiction problems. I work in Broward County. I have a private practice.

Q. You are not here as an expert witness?
A. No, as a friend.
Q. Tell the jury about your relationship with Mr. Bob and Mrs. Sylvia Allen, please.
A. That would be my pleasure. Bob was like a brother to me. Sylvia is like a sister to me. I have known them for almost forty years. I have met them when my sister and I was looking for a photographer. We were directed to Sylvia and Bob's studio. We were so young then. We met them and have been friends ever since. They were like family.
Q. How long ago was that?
A. Let's do the math. I am 59. I was 20 years. 39 years ago.
Q. You went to their studio then?
A. Yes.
Q. That's where you met?
A. I best-friended them.
Q. Did you maintain a close friendship?
A. A very close friendship for many, many years.
Q. Describe Bob.
A. Bob was a very special person. I was a little overcome when I saw these pictures. He was a very gentle gentlemen. From the old school. He was an old-fashion guy. He was funny and smart and warm and a very gifted photographer. He was a very good friend and a great father.

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Q. What did you just say?
A. He was a great father and husband as well.
Q. Can you describe their marriage to the jury?
A. They had a very close marriage. They laughed a lot. They raised some wonderful children. They were extremely close. And for heaven's sake, they stayed together for 40 years. What does that tell you in today's world. It was a great love story.
Q. My last questions deal with changes with Sylvia since Bob's death. I know she is seated in the courtroom. Tell the jury how she has changed. How has the loss of Bob affected her?
A. In my opinion it affected her very greatly. It's like you lose a part of yourself. I am not saying that Sylvia seems lost. She is a very capable and talented person. Something is missing. You can see that. There's like a hole in the side that used to be there. And that's what's missing.
Q. Okay. I am not going to keep you any longer.
MR. GROSSMAN: No further questions.
MR. CESARANO: No questions, Your Honor.
THE COURT: Thank you.
MR. GROSSMAN: Your Honor, we have cut down Mr. Schindler's deposition during the noon hour, the rest of it. We would like to complete it at this time.
THE COURT: Thank you. Go ahead.
MR. COHEN: We will start on page 6,660, line 23.

MR. GROSSMAN: This is the continuing of volume 2 of Mr. Schindler that we had read just before lunch.
MR. COHEN: We will read through the next page, okay.
MR. GROSSMAN: Yes, sir.
[Reading of Testimony of Andrew Schindler resumed.]
MR. COHEN: Go to page 6,701.
MS. FURNESS: Jay, could you give the line numbers for all the pages that you read.
MR. COHEN: Yes, I am going to give them to Robin.
Go to page 6,717, starting on the bottom, line 25.
Go to page 6,723, beginning on line 11.
Go to page 6,729.
Go to page 6,733, beginning on line 9.
Go to page 6,747, starting on the bottom.
The next page on the bottom.
Page 6,752, starting at the bottom.
On the bottom of the page.
Page 6,775.
Turn to page 6,801.
Next page.
THE COURT: Is that it?
MR. GROSSMAN: Yes, Judge, may we call our next witness?
MR. YAFFA: Your Honor, at this time the plaintiffs would call Jamie to the stand.

THE COURT: All right.
THE WITNESS: Jamie Roberta Engel. J-a-m-i-e, last name, E-n-g-e-l.

JAIME ENGEL, PLAINTIFF'S WITNESS, SWORN.

DIRECT EXAMINATION

BY MR. YAFFA:
Q. Good afternoon.
A. Good afternoon.
Q. If you could try to speak into the microphone so everybody can hear you and relax.
A. I will try.

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Q. Take a moment and tell the jury who you are.
A. I am the daughter of Bob and Sylvia Allen.
Q. Deep breath.
A. Deep breath. Bob Allen was my dad.
Q. How old are you?
A. 42.
Q. Are you married?
A. Yes, I am.
Q. Tell the jury who you are married to.
A. I am married to Bob Engel. We have three children. Christopher, who is 11; Taylor, who just turned 10; and Ryan, my little boy, who just turned 8.
Q. We know that your dad died in October, 1999, right?
A. That's correct.

Q. Can you tell the jury whether or not your children, Bob's grandchildren, got an opportunity to meet Bob?
A. Yes, they did. We used to have family dinner every Monday night. We have family dinner with my husband's parents on Sunday, and then -- because my parents usually worked Saturday and sometimes my parents had football on Sunday night. So Monday night was family night. Since they were little. Monday night was family night.
Q. Were you a close family?
A. Yes, very close.
Q. Tell the jury where you grew up.
A. In North Miami Beach, Florida. I attended Madonna in Hollywood and went to college at Florida International University also, which is where I met my husband.
Q. Did you graduate from the University of Miami?
A. No, I did not.
Q. Tell the jury how old you were when you finally moved out of the house.
A. It was in 1979. When I went to college at the University of Miami, I lived on campus there. How old I was in 1979.
Q. You were probably 18, 19 years old?
A. Probably.
Q. Do you think you probably got a recollection of what home was like living with mom and dad back then?
A. Yes.

Q. Tell the jury about that.
A. It was always crazy with three kids. I had an older sister and younger brother. Lots of activities going on. My parents, when we were younger, we lived above their office. My grandparents had owned a strip mall. There were three apartments above that. We lived in one of the apartments. My mother's parents lived in one of the other apartments. When my dad's parents would come to live with us, they would stay in the third apartment there. We were very close because we lived upstairs and my parents worked downstairs. We were just always together.
Q. Were you and your brother and sister always involved in the business?
A. Well, we were always running around the office and the building. I don't know if my sister really took pictures. But my brother took pictures and I had a knack for photography also.
Q. The jury also heard about mom being taught by your dad?
A. Yes.
Q. Did you ever go out and shoot photographs professionally with dad?
A. Not really professionally. I would go on the jobs that

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they would have, weddings and Bas Mitzvahs and things like that. To earn some extra money we would help carry the camera equipment in and out. When I was 16, 17 years old, I would do

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a backup camera and do some video.
Q. Weddings?
A. Weddings, Bas Mitzvahs.
Q. Parties?
A. Yes.
Q. Let's talk a little bit about that. He was 64 years old when he died. Did you have a good relationship with your father?
A. Yes, we did. I guess it was a typical father-daughter relationship. Because we were such a close-knit family we saw each other constantly. He was always there when we had football games and cheerleading and things like that. He went to all of those different activities. We spent a lot of time together as a family because the apartment was upstairs and the office was downstairs.
Q. Would you say Bob was an involved father?
A. Yes.
Q. Would he go to your school functions?
A. Yes, he would. When I was in high school, I was in the drama club and I sang in a lot of the plays. And he was always right up there in the front row taking pictures.
Q. Was he a serious guy or fun to be around?
A. Fun to be around.
Q. He had a good sense of humor?
A. Yes.

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Q. Did he always make you and your brother have a good time?
A. Yeah, he did.
Q. Was he a social guy or a recluse and he liked to be by himself?
A. No, he was really social. He had a really great sense of humor. He had a great ability to make everyone feel like a friend.

When I was in high school, actually, if I would be out with some friends, they always would want to go back to my house because mom and dad would be home. When most of the parents would be home in bed, our parents would be hanging out because they were involved in football. Everybody was involved in football, especially with the Dolphins at that time. They would all come back and talk football.

I remember when I lived at the University of Miami, I would get phone calls from my friends who were at my house at midnight. They would drive by and see the light out and they would stop in because they knew my parents would be up, and my dad would make my friends spaghetti.
Q. He would make your friends spaghetti?
A. He would make my friends spaghetti. If my friends were on their way home and saw the light out, they would always just stop because they felt they were like second parents.
Q. Did they treat all of your friends that way?
A. All of my friends.

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Q. Did your dad teach you values?
A. Yes.
Q. Did he teach you the value of family?
A. Yes.
Q. Was he a warm person?
A. Very warm.
Q. Was he always there to support you and your brother and

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sister?
A. All the time.
Q. Was it obvious that he loved you and your family?
A. Very much.
Q. Did your dad work through some difficult times with the kids?
A. Yes.
Q. Tell the jury about that.
A. I guess my sister, when she was in high school, started to have a drug problem. That caused a lot of difficulty in our house and concern with my parents trying to figure out how they could handle that. It was a very difficult time, but we got through it.
Q. The jury heard that dad developed a drinking problem at some point in his life.
A. It was about that time when my sister had that problem he began drinking in order to cope.
Q. Well, let's talk about that for a minute. That's the time

you think dad started to drink?
A. Right.
Q. I want the jury to appreciate how big a problem it was. Was this really a problem in dad's life, the alcohol?
A. Well, he went to work every day and he functioned. He did everything, attended all of our activities and continued with his everyday responsibilities. I think it was just more at night, when he got home, he would have a drink and he would go in the room and lay down and go to sleep.
Q. Mom wouldn't agree with that?
A. No.
Q. Did mom try to get dad to stop?
A. Yes, she did.
Q. Did dad try to stop?
A. He did. He went to a program and went to some AA meetings. So he tried.
Q. Was there ever a time that you recall that dad was unable to be the father that you needed because of the issues the jury heard about?
A. No, not at all.
Q. Was there ever a time when dad was unable to be a supporting husband to mom?
A. No.
Q. Was there ever a time that he was not able to do his job or anything else required of him?

A. No.
Q. You have told us about dad as a person and told us about dad as a father. I want to ask you about whether or not you can talk about dad as a lifelong partner and husband to mom.
A. I think I can.
Q. Tell this jury about mom and dad's marriage if you can.
A. They had a very different --
Q. Just take your time.
A. They had a very different relationship than I guess what you see on television, which is you are married and a husband goes to work and nowadays a wife goes to work, and then you come home at night and have dinner and go to bed or do whatever.
Our parents weren't like that because my parents were not only husband and wife, but they were business partners and they were best friends.
I am sorry.
Q. Take your time.

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A. Which is funny because that's exactly what my husband and I are like. We are best friends. We work together and he is my husband. I guess their relationship rubbed off on me and the person that I married too. They were just always together because of the situation that they worked together and they did everything together.
Q. Did they support each other?

A. Yes, they did.
Q. Was it obvious to you that they loved each other very dearly?
A. Yes.
Q. The jury has heard that mom had an accident in the '80s. Do you recall that?
A. Yes.
Q. Can you tell the jury whether or not dad supported mom through her problems that surfaced after the auto accident?
A. Very much so. She had a brain injury and had short-term memory loss in some situations. She became very, I will say, paranoid. I don't know if that's the word, but very cautious all the time about not wanting to forget anything, putting film in the camera and stuff. My dad was always the one to back that up, to plug in all the equipment when they were going on trips or getting ready for a job. He was the one making sure that he took care of all the details.
Q. Did she come to rely on dad after she had the accident and suffered the brain injury?
A. Yes.
Q. We will come back and talk about how mom is doing since dad's passing. I do want to ask you a couple questions about his smoking. I want you to think back as best as you can and tell the jury if you can ever recall dad not smoking.
A. I always remember dad with a cigarette in his hand or pack

in his pocket.
Q. Do you recall the kind of cigarettes dad smoked?
A. I think they were Benson & Hedges. They were in a mint-green package.
Q. This is Exhibit Number 526. It is in evidence. Does that resemble the mint-green pack that you saw?
A. Yes, it does.
Q. It is Benson & Hedges 100 menthol. Do you recall dad ever smoking anything other than Benson & Hedges?
A. Not to my recollection.
Q. Can you tell the jury whether or not dad smoked the cigarettes until after he could physically not take out a pack and continue to light up?
A. Yes, he did.
Q. He continued to smoke even after he was diagnosed?
A. Yes, he did.
Q. Did there ever come a time in your life that you can remember where you talked to dad about his smoking?
A. Yes. In high school I remember we had a program at the school on stopping smoking and the dangers of smoking. I remember that part of the program was to get people to stop smoking. It was the Great American Smokeout, I think was the name of it. You would try to get people to stop smoking or you would quit, if you smoked, for one day.
I remember I asked my dad to stop smoking. He smoked

anyway. He said that was a bunch of garbage. If they were bad for you, they wouldn't be selling them.
Q. Was that the attitude that your father expressed to you

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throughout your life?
A. Yes.
Q. Did you develop a health problem because of dad's smoking?
A. Yes, I had a virus in my eye. I was undergoing treatment for it. I couldn't be around any smoke.
Q. Did he try to comply with mom's request and began smoking outside at that point in time?
A. Right. He was out on the patio with a cigarette or with a cigarette when he walked the dog in the morning.
Q. Did dad ever try to stop smoking?
A. Yes, he did. I know he tried hypnosis and that Nicorette Gum or whatever, some type of a gum, and cutting down -- I guess, I don't know if you would call it cold turkey, but reduce the number of cigarettes that he would smoke.
Q. Do you remember how dad would act when he was trying to stop?
A. Very cranky, very irritable, not very fun to be around.
Q. Do you remember dad getting diagnosed with cancer?
A. Yes.
Q. Were you with mom and dad when dad was diagnosed?
A. I wasn't there. I was in Tampa at a business conference. They called us.

Q. This was in January of 1999?
A. Yes.
Q. Do you remember the time frame in between being diagnosed in January and dad's unfortunate passing in October?
A. Yes.
Q. Tell the jury about those nine months, what happened and what you went through.
A. We went through a lot of pain. Just trying to do a lot of things in a little bit of time. Things that you think you have years to do. We made it a point to try to get together more than just on Monday nights and just really spend a lot more quality time together.
But a lot of times, my dad, even if we had dinner plans, he wasn't able to come because he had chemo treatment. If he wasn't feeling good it would be very hard for him, because I lived down in South Miami and they lived on Miami Beach. It was a long drive. A lot of times it was very difficult for him to take that drive. He never really wanted the kids to load up in the car and drive all the way down there. He didn't make it all the time, but we did the best that we could to pack everything.
Q. You spent as much time as you could with him over the past nine months?
A. Yes.
Q. Did you see dad change over that nine-month period?

A. Yes, I did.
Q. Was mom caring and supporting for dad?
A. My mother took him to all of his chemotherapy appointments, and she would change his bandages when he got something on his foot. I think he had treatment on that too. So he had bandages and stuff. She would be at our house a lot just changing the bandages and making sure he was comfortable.
Q. You mentioned a moment ago you tried to jam a lot of stuff in a very short period of time?
A. Yes.
Q. Did you get a chance to tell him how much you loved him?
A. Yes, I did.
Q. Did he get a chance to tell you and your brother and sister how he felt?

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A. Yes, he did.
Q. Did you hear dad express to mom how he felt about her?
A. Yes, he loved her.
Q. Did she get a chance to tell him?
A. All the time.
Q. Mom talked about the opportunity that she had to renew her vows with dad. Were you there to witness this?
A. Yes, I was.
Q. Tell the jury about that, please.
A. It was in the hospital. We knew that he didn't have a lot more time. So it was in -- the Chaplin came in, and it was

there that they renewed his vows for him.
Q. We know dad died October 1, 1999. Were you there when dad passed?
A. Yes, I was.
Q. Was mom there when dad passed?
A. It was the two of us.
Q. Can you take a moment and try to explain to this jury, it's been almost three years, can you try to explain to this jury how mom has done since dad's passing.
A. My mother is very lonely. It's very understandable because when you had a relationship like my parents had for all of these years and when they are your business partner and best friend and they spent every day together, unless my dad was at a football game that my mother couldn't go to, my mom would be here, they were together all the time. When I see her she is very lonely. We spend a lot more time together, although I know that doesn't make up for it. She is lost without him. It's like losing your right arm, I guess. It's just not there anymore.
Q. You do your best to see her a lot?
A. Yes.
Q. Has she told you that she is afraid?
A. I don't know that she has used the word "afraid," but she is nervous. She is concerned. She had my dad there for so long.

Q. Is there any doubt, based on what you observed, based on what you see day in and day out, based on what you hear, that mom still misses dad every single day?
A. There is no doubt in my mind.
MR. YAFFA: Thank you very much.
MR. REILLY: No questions, Your Honor.
THE COURT: Thank you.
You may step down. Thank you. Before calling your next witness, we will take a short recess. Ladies and gentlemen, if you will step into the jury room.
[The jury leaves the courtroom.]
[There was a short recess.]
MR. REILLY: Judge, I have been informed that they want to show the video of Doctor Wakeham and Mr. Bowling. I would like to make one additional objection that I should have made earlier. This program that it came from was performed or taped in England. After it was done, there was a court order entered by an England Court enjoining this from ever being shown in the United States based on a finding that this interview was obtained by fraud. I would be happy to provide Your Honor with the England court's order.
THE COURT: I don't have any idea of what it is that we are now discussing. You have hundreds and hundreds of witnesses listed and thousands and thousands of documents. Somebody bring me up-to-date what this is about. This is where

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we are. We can't do this at the end of the day?
MR. REILLY: Well, they want to show it before the end of the day --
THE COURT: Do they?
MR. YAFFA: Yes, sir. We argued this during the pretrial hearings. All the exhibits are in evidence. It's been ruled upon. It's ready to go. This is the final thing that we are going to do in the plaintiff's case.
THE COURT: We had a video in that two-week pretrial conference, did we?
MR. YAFFA: Yes, two of them.
THE COURT: Go ahead, Mr. Reilly.
MR. REILLY: There is an interview conducted by a British broadcasting company. After the interview was -- in which a court was the former president or chief executive officer. And the other fellow was probably the vice president in charge of Development.
THE COURT: They were videotaped giving a statement in England, and consequently not only has it -- this been enjoined from the United States, not only was it obtained by fraud, but it can't be relevant to our litigation because it hasn't been shown in the United States.
THE COURT: He says we went into all of this on a prior occasion during that four- or five-day pretrial conference.

I do not recall, now, you have to forgive me if I overlooked something. I think I would certainly remember if there was an allegation that something that was fraud evidence would be presented to this jury. I don't remember hearing that. As I say, I think I would have remembered something as dramatic as that.
Can you enlighten me why this was -- if it was not, why it was not brought to my attention back in December or January -- January, I guess, that we had this pretrial hearing. How is this coming up at this point? I am mystified at this point.
MR. REILLY: Your Honor, all I can tell you is I went as best I could over all the objections that I had for all the exhibits that the plaintiff had. I realized -- they didn't attempt to put it in until today. I didn't know they were going to do that.
THE COURT: But they told you then, and I reviewed it. Why did you not tell me that somebody had made up a false, phony T.V.? That would have made a big impression on me at the time. Why are we bringing this up?
MR. REILLY: It hasn't been shown to the jury. I didn't know it was going to be shown.
THE COURT: My goodness sakes alive, they listed hundreds and hundreds and several thousands of exhibits. We went through all of them. We didn't have enough time to go

through the defendant's proposed witness list. All you had to do is say, "Judge, this is a phony, false thing," and that would have been the end of it right then and there.
But saying that you wanted to wait to see if they were going to it use it, I am sorry. That's like saying I will elect to wait to stop you from making 2,200 objections to documents that may have or may not have been used.
All you had to say about something this phony and this fraudulent was that that's the case. Right off the bat, that takes care of it. You contend that these are, what, phony

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actors in this thing? Why is it phony? Forget what the judge said. Tell me why it is a phony, false film to be shown to the jury.

MR. REILLY: It's my understanding that the British courts said the tapes were obtained through fraud.

THE COURT: That doesn't tell me anything. Maybe the actors were supposed to show up at 10:00 and they showed up at 11:00. Now, tell me why this film leaking -- false bit of evidence that the plaintiffs are offering to this jury. Again, we will get to why you waited to the 11th and a half hour or 12th hour to bring it up.

Tell me, what is there about this document, this film, or this evidence that is false, misleading and improper? Tell me.

MR. REILLY: It's my understanding that the Court in

England --

THE COURT: That's semantics. That's semantics. Maybe Mr. Reid can speak the English language. You tell me what it is about this film that is false and fraudulent. Mr. Reilly is not answering my question. All he says is a judge has labeled this inadmissible. And has enjoined it. Mr. Reid, maybe you can tell me? Mr. Reid, tell me.

MR. REID: I understand what Mr. Reilly is telling you. I think Mr. Reilly can explain it better.

THE COURT: Somebody please tell me why. I am accepting your word that it is fraudulent. Tell me why.

MR. REILLY: Representations were made as to what was going to occur during this filming, and they apparently did not occur to the satisfaction of the British court.

THE COURT: I guess we bring the people in and let me find out if they can satisfy me or not. I can't say because the British court sustained an objection or not that I should follow suit. That's ridiculous. That's not an objection.

You are telling me at least one prior court has looked at this and said do not use this film in England, and you are representing to me that he says don't use it in America. Is that what you are telling me?

MR. REILLY: Correct, Your Honor.

THE COURT: Well, that's nonsensical.

Do you know where this film is false or phony?

MR. YAFFA: There's nothing false and phony about it. This is the head of Philip Morris interviewed in it. It has been shown in the United States. It has been admitted to many, many courts across the United States. Not that that has any influence on you.

These are the positions that the company has made. I made this argument to you before. We took the entire videotape shown in the United States and sealed that portion which are considered inadmissible to the tape. The only portions shown to the jury are the portions that this Court ruled upon that contained the interviews of the representatives of Philip Morris. There is nothing inadmissible. They are relevant. They contain clearly, clearly admissible comments made by the representatives of the company, Judge.

THE COURT: You left with me three cassette tapes. You also left me a transcript of what was on these tapes. Am I correct on that? This was a month ago in the thousands of objections we considered, is that correct?

MR. YAFFA: Yes, that's correct. You have two series of tapes.

THE COURT: Did we ever -- and I was to make rulings.

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I listened to Mr. Reilly or Mr. Reid, whenever they had an objection, and looked at their written objections. I was left with the objection that I was to rule upon the objections to the questions that were asked, make rulings on that, give it

back to you, and you were to snip, cut and paste, or whatever experts do with film. That's what I did. Is that your memory of what I did?

MR. YAFFA: Your Honor, your recollection is right on point. There was two sets of videotapes. One was the congressional hearings. I sent you copies. You looked at them. You had me go back and cut and paste.

THE COURT: Go ahead.

MR. YAFFA: Then we had another set of videotapes. One of which was called Death in the West. You ruled on it that we could not show it to the jury. You marked it I.D. and you actually have it sealed in the file.

What we have are the portions of the Death in the West that relate only to the interviews of their Philip Morris head scientist and chief executive officers. The Court ruled that these interviews are admissible.

THE COURT: What objections were made by the defendants in this case to that exhibit -- give me the number of that exhibit.

MR. YAFFA: This exhibit is 233B and 233c.

THE COURT: What objections did they make at the time that I made this ruling?

MR. YAFFA: If you allow me to pull out the pretrial stip?

THE COURT: Did they tell me that a British judge

barred this from any United States hearings?

MR. YAFFA: No, Judge, this is the first time we are hearing of this.

THE COURT: These are the heads of the companies at the time being interviewed, correct?

MR. YAFFA: Yes.

THE COURT: Do you know anything about the statement that Mr. Reilly has had represented to me that someone tricked or misled the tobacco company presidents in giving these statements?

MR. YAFFA: Not a thing, Judge. I have no information at all.

THE COURT: I guess what I have to do, Mr. Reilly, is to tell you to call your first witness, and let's find out whether your statement has any foundation.

MR. REILLY: Your Honor, I would be glad to bring the --

THE COURT: How about bringing me a person in.

MR. REILLY: They are all dead --

THE COURT: Pardon me, that your person was -- misled someone or tricked some one or misled me that a Judge -- I need to know the merits, what it is that your president of your company, how he was tricked and misled so as to make this evidence inadmissible. I don't need the semantics of a judge making that decision. Listen to him.

I have got all of this other stuff that has been admitted in a bunch of other cases. I don't want to get into the opinion of all of those other judges. What I want to know is what proof, what evidence can you adduce or give to me that will show that the presidents of your company or scientist from your company was tricked into giving a statement and cannot be

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given to the jury? Have you got such evidence? Can you get it?

MR. REILLY: I can get it, Your Honor. These people have been dead for many years, of course. I can't bring you CEO. I can't bring --

THE COURT: Tell me who you can bring in. We have got 150 million people in the United States. I don't want to know what you can't bring.

MR. REILLY: You have asked me --

THE COURT: It's your burden of proof, sir. You have got to prove something. You make these very strong statements. You are basing it on what some court made. You said you haven't talked to the CEO that made the statement that he was tricked because he is dead. Well, who did you talk to give you the information?

MR. REILLY: Your Honor, what I have is the order of the Court.

THE COURT: That's it? You don't have any proof at all that the people that made these statements who were then

CEOs and presidents of your customer, did so totally tricked, hypnotized, drugged or whatever?

MR. REILLY: No, Your Honor. What I can say is I can bring you probably the transcripts of whatever pleadings that occurred, the hearings that occurred, the basis for the ruling by the Court. But can I bring you Mr. Bowling? I believe he is dead. Can I bring you the pleadings and that sort of thing and the pleadings that was presented to the Court in England? Sure. And I will do that.

THE COURT: Can you bring me anybody that can say that I know, whatever his name was, president of Philip Morris, when he made this statement, was drugged, hypnotized, misled, didn't know what he was saying or what he was doing? Can you bring me anybody that has that kind of proof? That's the problem.

MR. REILLY: Your Honor, I don't know off the top of my head whether there is a person that has that information rather than the information provided to the Court in England.

THE COURT: Did anybody say that to the Court in England?

MR. REILLY: I am confident. Otherwise the Court wouldn't be able to make the ruling. Your Honor wouldn't enter an order without hearing the evidence.

THE COURT: No, but, unfortunately, I am the only judge that requires that proof. A lot of judges just listen to whatever lawyers proffer. I do not in this court. I don't

take proffers of evidence. And lawyers stand up in mag court across the street every day of our lives and say, "Judge, this man should have a bond because he attended Sunday school every day of his life." Proffer. Proffer. Proffer. I require oral testimony.

I don't know what this judge in England did. He may have accepted somebody's problem. The wife may have said, "Judge, I saw this guy on a street corner last night and tricked him into saying what he said." Or he could have said, "I was tricked or I didn't feel well." I don't know what he said.

Somehow or the other, if you are going to say a film or an interview that the president of Philip Morris gave should not be shown to the jury because it is false, and the reason it is false, because the man was something, was drugged, hypnotized, tricked, misled some way, then I have to have some evidence of that before I exclude it.

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It's pretty obvious, clearly relevant evidence when it comes from the head of your company if it's about the subject matter of your suit. That then gets presented to the jury as his statement.

Now, if you wish to explain it, you know, bring in somebody, his widow, his wife, to say that night -- whatever. I don't know. He was hypnotized. He was getting senile. Whatever. Then that's the weight to be given to it.

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You have got the direct interview of the president of Philip Morris about the subject matter of this suit, then to just come in and say a judge in England said it can't be shown in America and the other side says American judges have permitted it to be shown. I guess some have and some haven't. And you want me to admit it based upon what the judge in England has said or the judge in Michigan or Nebraska has said. That's not the way to keep it out of evidence.

MR. REILLY: Your Honor, may I suggest that you give me until Tuesday morning?

THE COURT: Well, I wouldn't mind, except you didn't even raise it a few months ago.

MR. REILLY: Judge, I am only human. If I missed some of the objections, then I apologize to the Court. I have done the best I could.

THE COURT: You have done a very, very thorough job up to this point. But something like this, which seems to be an interview of the president of your company, is giving false evidence because he was tricked into making statements that he shouldn't have made or didn't make, I guess is what the submission is, and that you didn't raise that because you didn't know whether they were going to use it or not when they said they were going to use it. I was asked to rule upon it. I did rule upon it. It looks like -- I don't know why you waited.

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It looks like you just decided not to do anything about it until the last minute, which would have only the effect of delaying the trial at a point when you could have raised it thirty days ago. It's a lot like waiting and not taking the deposition of a treating physician about some of these things. Those are choices lawyers make for their clients. They have the right to do that.

But then they can't complain if later on they should have done something, they should have gone and taken the interview or should have gone and taken the deposition. It makes me very suspicious of this objection coming at this minute. Based on -- not on any personal evidence but based on something you read from a judge.

How critical is this? Can it be brought up by rebuttal testimony from the plaintiff? And then we could give them some time to go find a witness that will tell us why the president of this company gave false or misleading, wrongful statements based upon fraud committed upon him when he gave the statement? Is that doable? Is that a way to handle this mess that is now being brought up in the 12th hour?

MR. YAFFA: May I respond, Your Honor?

THE COURT: Yes.

MR. YAFFA: We planned our case to move it in. This evidence is critical. They knew we were going to show it to the jury. Most importantly, Judge, Mr. Reilly is telling you

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is not what these guys said was under duress or under hypnosis. These men said what they said voluntarily. What he is saying

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is this tape was released somehow inappropriately. These people said what they said voluntarily. When the Court says what they said, here is what they said. You are going to see they said exactly the same thing over and over again that they said publicly. They knew internally one thing, yet externally they knew another thing.

MR. REILLY: Your Honor, Mr. Yaffa is exactly wrong. The Court knew that it couldn't be shown. Couldn't be shown in England and couldn't be shown in the United States.

MR. YAFFA: But it has.

THE COURT: The difficulty with all of this is just semantics again. That's all. Just wordsmithing. That's all it is. You say you want to label the tape inadmissible because in your opinion you say so. No one is telling me why, why, why it is fraud. What are the facts? This is exactly the same argument that we had that I considered two or three nights ago. I kept asking, pleading with the lawyers, to stop labeling things in boxes like, well, he is an expert. Tell me why.

I am asking you, and really for the last time -- I am not trying to embarrass you, but I would like to know what it is that makes the statement false that the two men gave on this film? What is it? Not that a judge later on looked at it and said, "I am going to enjoin that." It could have been released

or anything. I don't know what it was. I want somebody to tell me what it is, what it is that makes the testimony, the proof, false.

If it's false, it shouldn't go to the jury. If it's truthful evidence, relevant evidence, then it should go to this jury. Now, will you please tell me why it is false.

MR. REILLY: Judge, what I know is, as I stand here this morning, have I reviewed the pleadings filed in England, have I looked personally at the Court order, no, I have not. It's my understanding that a Court order was entered based on how the interview was obtained.

I don't mean by that that they were caught on the street or they were drunk or drugged. That's not what I am saying to you.

THE COURT: What are you saying? Please, now we are getting to it. What are you saying?

MR. REILLY: It's my understanding that certain representations were made to either Philip Morris or Mr. Bowling or Doctor Wakeham about what this interview would be about, what the subject matter was going to be and the questions. Then it turned out to be a completely different thing.

THE COURT: Right, and they answered them anyway. Did they answer them falsely?

MR. REILLY: I don't know if they answered them

falsely.

THE COURT: See, that's the key to all of this. If people walk down the street and a newspaper reporter comes up to them and says, "Gee, I want to buy you a cup of coffee, Mr. Bowling, whatever CEO name, and I am the cousin of Prince Philip," and Mr. Bowling sits down and has coffee. "By the way, let me talk to you about tobacco," then he goes on tape. If Mr. Bowling answered the question truthfully, then that probably is relevant, admissible evidence. He may have been lied to outrageously by the reporter or the T.V. reporter, whoever it was.

The bottom line of admissibility is the truthfulness of the testimony. The truthfulness of it. The fact that

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Mr. Bowling wouldn't have talked to him if he knew he was a reporter, wouldn't have talked to him if he knew he was the cousin of Prince Philip, in my silly example, that's all semantics, all wordsmithing.

Bowling may have been fired by his board of directors because he did a stupid thing and sat down and had an interview with somebody. The question is not whether he had the interview or whether he was stupid. The question is whether he told the truth.

Now, if you represent that this interview contains untruthful matter that would mislead the jury on the facts that he is relating, that's serious stuff. That's something that I

don't want to have happen and won't permanent to happen.

I am guessing that we are engaging in semantics by saying, well, some judge wouldn't let that in. And the plaintiffs say it's critical to their case. Why on earth this is coming up at this point in time, I don't know. Unless you are able to represent to me that someone, your client or someone, has told you in good faith and sincerity and you believe them, that these statements are false, then I don't know. Maybe you can enlighten me. Other than a judge says that it shouldn't be shown.

MR. REILLY: Your Honor, I have no information as to whether or not the answers and questions given were false. I am not attempting to represent that.

I do know in terms of the relevance of these interviews to this case, an American, not someone living in England, when the Court enjoined it so that it couldn't be shown in the United States.

Obviously, Mr. Allen could not have possibly seen this video, could not have possibly seen this English interview. When the plaintiffs say it's critical to this case, what does that mean? Does that mean that Mr. Allen was influenced in some way by what we are going to see? Absolutely not. You can ask them to make a reputation to you that Mr. Allen could have possibly scene this interview, but they can't because he couldn't have.

THE COURT: I rule this is totally immaterial to whether he saw it or not. This is going to the question of whether or not the statements being released by your company in which they could have seen in hundreds of newspapers and beamed down to the internet -- a man like Mr. Allen would have seen it, advertisements, that's part of the issues in this case. I didn't make it that way. You all have made it that way. The answer to all of this is that objection to the testimony must be, of course, not only relevance, but that some element of it would be misleading or false. You cannot in good faith make that representation.

You are relying on the fact that a British judge said, well, CEO was tricked into giving this, and he did it. He was tricked into doing it and our sense of fairness says that we can't tape. Even though it's truthful. That wouldn't wash under our rules of evidence. That's not a ground to exclude it.

You will argue as to the weight. You will have a full thirty minutes that each side has to argue the case. Approximately thirty minutes. Maybe a little longer. You have thirty minutes to tell the Appellate Court all the error I have committed. So think about your closing argument.

Basically, the Court overrules your objection. It is untimely. It is not based on any relevant basis for excluding

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untruthful, improper evidence. If you discover that the

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statements made were falsely made, knowingly made, for all I know the CEO of your company may have lied to the interviewer, may have made false statements, may have made so for a personal reason. Maybe they wanted to get even with Philip Morris. If you can find it, bring it in and present it to the jury and they can consider whether that statement is true or false.

That's the kind of evidence we need. Not that somebody listened to it and decided that no, it shouldn't be introduced.

The objection is overruled without any prejudice to your right to rebut the falsity or the truthfulness of the statement as made.

MR. REILLY: Your Honor, may I have an instruction to the jury if I am able to demonstrate to Your Honor that this video could not have been and was not shown in the United States?

THE COURT: No, no, no. That has got nothing to do with it. You are here in a trial in the Southern District of Florida. The question is admissibility in this case, not whether it was admitted in some other trial. If you show to me and bring in evidence, which I invite you to do, that this evidence is false, that these statements that people made are false, then in that situation, if you or Mr. Reid move for a mistrial in this case, and it's shown that we permitted to have admitted into evidence a false statement and information, then

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in all probability your mistrial is going to be granted. And that is your remedy right then and there.

You now say you laid back and waited. You knew this was coming a month ago, but you waited until today, until literally the last minute of the plaintiff's case, and your reason was that you didn't know whether they were going to give it or not.

MR. REILLY: No, that's not quite right, Your Honor.

You keep cutting me off, Your Honor.

THE COURT: It really has a credibility with the Court.

MR. REILLY: I am trying to be honest every time I am before you. You sometimes cut me off.

THE COURT: I have listened to you and the idea that what you are saying is truthful. I listened to you when you stood up and said that's bad evidence.

But you told me just a little while ago -- what you told me just a little while ago was that the reason that you brought this up here at 3:25 in the afternoon, we told the jury we were going to let them go at 4:00, was that you didn't know whether plaintiffs were going to offer this evidence or not. Now you told me that, sir.

MR. REILLY: I did, Your Honor. But I first told you --

THE COURT: You told me a lot of things first. I am

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focusing --

MR. REILLY: You cut me off again, Your Honor.

THE COURT: -- because you chose to wait until now to raise this. You chose to wait to see if they were going to offer it. You said you knew that they were going to offer it because they said they were a month ago. You knew and had me go through all the exercise of ruling on the other objections to the Death in the West or whatever this tape is called, and I did all of that. You chose not to bring this objection up

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until the last minute. Now that is untimely. Untimely, sir. I'm sorry.

MR. REILLY: That's not what I told you, Your Honor.

THE COURT: The record will show what you told me. I think everyone in the courtroom heard it. I won't embarrass you by asking your co-counsel if they heard it, but I am sure they heard it.

Bring the jury.

How long will this take to play?

MR. YAFFA: It will take ten minutes.

THE COURT: Is that your last evidence?

MR. YAFFA: We have got the life tables, and we have got a stipulation that Mr. Grossman needs to raise.

[The jury returns to the courtroom.]

THE COURT: Be seated, please.

MR. GROSSMAN: Your Honor, we have gone over the life

tables. May I publish them to the jury?

THE COURT: If they are stipulated to and agreed, show them to the jury.

MR. GROSSMAN: This is from the National Vital Statistics reports from the Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics system. The latest one is volume 47, number 13.

It takes individuals by race and sex. Mr. Allen died at age 64. At that time he had a life expectancy of another 16.5 years. He had another 16.5 years to live under normal life expectancy. Mrs. Allen, who is of her race and sex, has another 19.5 years to live. Mr. Allen, age 64; for Mrs. Allen at age 64, another 19.5 years to live, from the vital statistics of United States Government.

THE COURT: All right. Your next witness.

MR. GROSSMAN: Your Honor, at this time we are going to show the jury two short videotapes. That will conclude our evidence with the exception of stipulation or judicial notice. Thank you.

MR. YAFFA: The interview that you are about to see is an interview of Doctor Helmut Wakeham, the chief scientist of Philip Morris.

MR. REILLY: Could we have the date of this, Your Honor, and the location where the interview occurred?

THE COURT: The date and location, if you know.

MR. YAFFA: I don't know, Your Honor. I have got it in evidence in the transcript. If you would like me to retrieve it I can. It's in evidence.

THE COURT: I understand that. How long will it take you? We are trying to get the jury out of here early today. How long approximately?

MR. YAFFA: I think it was in the 1970s.

MR. COHEN: August 14, 1976, Your Honor.

THE COURT: 1976, August 14. Where was it taken?

MR. COHEN: Broadcasting company. London, England.

THE COURT: London, England. Go ahead. Show it to the jury.

[Videotape was played.]

MR. YAFFA: The next videotape we are going to show, Your Honor, is of James Bowling, the vice president of Philip Morris, taken August 16, 1976. It was an interview by Peter Taylor of the Tames Broadcasting Company in London, England.

THE COURT: Show the film.

[Videotape was played.]

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THE COURT: All right, your next witness?
MR. GROSSMAN: Your Honor, that concludes the plaintiff's case at this time, with the exception of a matter that we can bring up outside the presence of the jury. The plaintiff rests with that one exception, the library book

issue. We have no more witnesses.
THE COURT: All right, ladies and gentlemen, we are going to recess for the long weekend. Monday is a federal holiday of some sort. I don't really know what it is.
MR. REID: President's Day.
THE COURT: So we will not be in session on Monday.
With respect to when you report here on Tuesday, I have certain legal matters that I have to go over with counsel. I do not know how long this will take. I suppose that we can do it this evening or do it first thing Monday morning if we come in. So I am thinking about when you will need to report.
If we allocated a couple of hours --
MR. REID: Could we come up and chat about this? I have an idea. Well, I think ten minutes will be fine.
THE COURT: We can stay here all evening if you would like. I assume that if we told the jury to come here at 10:00 and we all know that we can come in here at 7 or 8 in the morning or we can stay here until 7 or 8:00 tonight.
MR. REID: Tuesday morning, Judge.
MR. GROSSMAN: Tuesday.
THE COURT: All right. 10:00 on Tuesday. Ladies and gentlemen, we have got a whole floor of witnesses, so please be careful. Don't accidently or innocently overhear a witness talking to somebody. Don't let anybody talk to you about the case. Don't talk to anybody about the case. If there's

anything in the newspaper, television or radio, don't read it, watch it or listen to it. We will see you at 10:00 Tuesday morning.
[The jury leaves the courtroom.]
[3:45 p.m.]
THE COURT: All right. This is the time when counsel for the defense would normally make their motions. Mr. Reid?
MR. REID: Yes, sir, I was going to request, and this is what I was going to suggest, that Tuesday morning that we make our motions, just the motions without any extended arguments. We have a witness scheduled to be in first thing Tuesday morning.
THE COURT: Well, I am going to listen to your arguments. I don't want you all to hand me a three-foot high stack of papers that has been generated over the weekend just to give me a chance to read.
I don't want to do that. I am going to hear from you. I am going to listen to your arguments. You have made quite clear that you have prepared the defense to this case, and you have raised a number of issues that we need to hear from you on. I want you to have the time that you need to do that. That's what I am getting at.
MR. REID: What I am going to suggest is that we make the motions so they are in the record, and we would argue them Wednesday morning instead of Tuesday morning. That way we can

have the witness that is scheduled to come in, come in and we would have made the motions.
THE COURT: I am sorry, Mr. Reid. I didn't quite follow what you are saying. You can make a formal motion now in two minutes. We are talking about the time to argue your

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motion. You are suggest doing that when?
MR. REID: Wednesday morning.
THE COURT: What would we do all day Tuesday?
MR. REID: We would have a witness.
THE COURT: You would go ahead without prejudice to your right to argue the motions after the witness is heard, fully preserving the defendants' right to argue their -- in civil cases is it Rule 29?
MR. REID: I forget the rule. It's not a directed verdict.
THE COURT: All right. I am comfortable with reserving to you by a statement that you are fully protected if you are comfortable with that.
MR. REID: What I wanted to do is think about it so I am sure that I cover all the bases. Then we make that motion on Wednesday morning. We put our witness on Tuesday morning and we argue Wednesday morning.
THE COURT: We couldn't do it from 8 to 10 on Tuesday morning? That gives you two hours, an hour to a side if you need it? Would that not -- you would have the weekend.

MR. REID: Sure, we could do that.
THE COURT: Then you would be doing it in the traditional sequence, although there is nothing wrong with doing it on Wednesday morning. At least at that point, then, whatever occurred we would be able to pick up at 10:00 and go right on forward.
MR. REID: I realize we don't always have choices. If I were going to decide, I would prefer to argue it the next morning.
THE COURT: Well, I just don't know what we are going to do for two hours or even an hour on Tuesday morning. I could have told the jury to be here at 10:00. I suggest that you make your formal motions right now?
MR. REID: No, Tuesday morning.
THE COURT: Okay.
MR. REID: At, say, 9:30 we could come in.
THE COURT: You feel that would not take more than 30 minutes to make that formal statement and argue it the next morning?
MR. REID: Yes, sir.
THE COURT: Mr. Reilly.
MR. REILLY: Judge, do you have some opposition to us providing you with any written material on this?
THE COURT: No, I don't have a bit. But I don't want you to bring in a wheelbarrow like you all have been doing in

this trial and say, "Judge, here is our are formal motion." We don't want that. That's what I am saying. If you are going to dump up here a foot-high stack of material that has been computer generated over the next three days by your staff and say, "Judge, here this is and you go read it," that's what I don't want to have. It's that simple.
You may file anything that you think is appropriate and proper. Fine. I have no difficulty with that. Whether I have an opportunity, I wouldn't even have an opportunity if you hand it to me Tuesday morning and read it between trying to listen to your witnesses and ruling on the matters that we have to rule on and then read it on Monday night. I don't know how I can do all of that.
Therefore obviously you have a right to file anything you want to file. I am just telling you, if you come in here with 1,000 pages of material and then you go to Appellate

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Court, if you ever get that far, if we ever get a verdict, and say, "Judge, the judge didn't read the thousand-page memorandum," the Appellate Court has the opportunity to put it off for a month. They don't understand why trial judges get tired of reading these things over the weekend. That was my remark.

You can file whatever you want to file. I will do my best to consider it. I have been reading a lot of stuff that didn't get introduced into evidence. I made a lot of rulings,

anticipatory rulings, which I never do in most cases. I have done it to try to accommodate this jury and keep it running smoothly. I am getting to the point where I can't do it anymore.

I will do the best I can. The hours that this is consuming, running up to 14, 16 hours a day, is getting to be a little too much.

All right, then, I will meet with you at the -- what is submitted here, Mr. Grossman; that we convene at 9:30 on Tuesday morning and they will have 15, 20 minutes or so or a half hour, if need be, for a formal motion for directed verdict, which frankly couldn't take three minutes to the side, the formality. The plaintiff will not have to respond to anything because nothing will be argued. And the argument will have to occur on Wednesday morning, which may have to be from 8:00 until 10:00, or it may have to be at some other time. I don't know what we are doing.

The parties are willing -- the defendants are willing to proceed in that fashion with the Court's statement into the record that the defendants will not be prejudiced by not making their full argument on their motion at the time that they submit their formal motion, and that they will be fully protected to raise that on Wednesday morning and make such argument as they wish. And there is no prejudice to doing that.

Now, do you understand that and agree?

MR. GROSSMAN: Yes.

MR. REID: You had wanted our proposed jury instructions. I have a set to give you. I do not have the verdict form because that is still in flux. I will hand up an original and one to the Court.

THE COURT: All right. I believe Mr. Cohen, the other day, had something. I said hold it. I will get all at once. Could you, Mr. Cohen, look for these proposed jury instructions and any form verdict you may have. The form verdict is very important. I know that we will give that a lot of thought and consideration. I like to have the benefit of your thinking before we have to take it up at the charge conference.

What has just been handed up to me are the defendant, R.J. Reynolds Tobacco Company and Philip Morris USA, requested jury instructions. I have two copies, an original and one copy. We will have the clerk mark the original in evidence.

At some point in time -- and, Mr. Reid, you know better than I, when getting to where we need the verdict form, but I would like it several days in advance, even though it be rough or modified later. At least I would like to see counsel's respective positions or thoughts on that. We can change all of this around at a charge conference.

MR. REID: Yes, sir.

THE COURT: For the plaintiff, you had your requested

instructions several days ago.

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MR. GROSSMAN: Yes, sir. We have had them since the beginning. They are here now. They are marked up. But I will give them to you, Judge. I am sorry.

THE COURT: Do you want to submit clean copies on Tuesday morning?

MR. GROSSMAN: Tuesday, if that's okay.

THE COURT: Tuesday will be fine.

What I am going to do, Mr. Reid, let me give these back to you simply for this reason. Ms. Kramerman was trying to catch a plane and left, so she can't mark it in evidence. Tuesday morning, then we will get it all at one time. She will mark it in evidence and she will have it.

I don't care who the witnesses are. I know that we've been following the rule that they will be made known to the other side. Mr. Reid has indicated that he has done that. I am sure that he has. My question or inquiry was -- is do we have enough, and please make sure you have enough, witnesses to take us through the day on Monday. And you have any guesstimate, estimate, guesstimate, you are not held to anything, but can you give me any sort of an estimate as to how long the defendants may need?

MR. REID: We are hoping to do it in five or six days.

THE COURT: Okay. Fine. You are not bound to that. You are not limited to that.

All right, Tuesday morning, 9:00, and 10:00 with the jury.

[Proceedings concluded at 3:40 p.m.]

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

_____ _____

DATE

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